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BLACKBURN, J.—I am of the same opinion. Whatever may have been the proper construction under the old law when bankers' checks were exempt from the stamp-duty, now that they are all liable to be stamped the old objection does not arise, and parties may still be subjected to a penalty; but the present objection can only be sustained when the stamp upon the instruments is upon its face insufficient.

SHEE, J.—I also am of opinion that this rule should be made absolute. The cases of *Williams v. Jarrett* and *Whistler v. Forster* decide that it is sufficient to render an instrument admissible in evidence if it has upon it such a stamp as it purports upon its face to require.

Rule absolute.

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*Court of Queen's Bench.*

O'HANLAN v. THE GREAT WESTERN RAILWAY.

When goods have been intrusted to a carrier to convey to a particular place, and by his default they are not delivered, the party entitled to them will be warranted in procuring other similar goods at the place, if there be a market for them, and the measure of damage will be the price at which such goods can be obtained in the market. If, however, there is no market for such goods at the place of delivery, the damages must be ascertained by taking into consideration various matters, such as (in addition to the cost price) the expense of transit and reasonable profits.

THIS was an action brought against the defendants for breach of contract as carriers in not delivering certain goods delivered to them to be carried from Leeds to Neath, the declaration stating that "the said goods remained undelivered as aforesaid for a long and unreasonable time, and the same became and were and still are wholly lost to the plaintiff, whereby and by means of which said premises the plaintiff has not only lost the said goods, but also by means of the said premises, he has been greatly injured and damnified in not being able to carry on his trade and business of a draper for want of the said goods," &c. To this the defendants pleaded payment of 22*l.* into court. The plaintiff replied that he had sustained damages beyond that amount.

The cause was tried before BLACKBURN, J., at the Swansea Assizes, when the jury returned a verdict for the plaintiff for 25*l.*,

being 3*l.* more than the amount paid into court. It appeared upon the trial that the plaintiff was a tailor who travelled with his workmen from place to place, working up articles for the retail trade, and selling at different places the articles so worked up, and which were sent to him to meet him at such places. In the present instance he had ordered certain goods to be sent to him from Leeds to Neath, in Glamorganshire, by the Great Western Railway, so as to be delivered to him there on the 9th and 10th November 1863. The goods had been forwarded on the 6th November, but from some unexplained cause they never arrived, and the plaintiff and his men were kept idle waiting the arrival of such goods for many days, and he then purchased other goods of the same vendor. But in consequence of the state of things he was necessitated to sell at a loss a horse and cart which he had with him for the purpose of his business.

*Grove*, Q. C., having moved (pursuant to leave) for a rule to enter a verdict for the defendants on the ground that the 22*l.* paid into court covered the cost price of the goods and the charge of bringing them to Neath, and thus the plaintiff was not entitled to any further damages,

*Bowen* showed cause and contended that the plaintiff was entitled to damages beyond the cost price and carriage of the articles; namely, for his loss of profit upon them, and to himself in consequence of the non-delivery: *Rice v. Baxendale*, 7 H. & N. 96, 30 L. J. 371, Ex.; *Wilson v. The Lancashire and Yorkshire Railway Co.*, 6 H. & N. 211; *Black v. Baxendale*, 1 Ex. 410.

*Grove*, Q. C., and *Giffard*, Q. C., in support of the rule, contended that the plaintiff was not entitled to any damages beyond the cost of the articles: *Hadley v. Baxendale*, 9 Ex. 341.

BLACKBURN, J.—I am of opinion that this rule should be discharged. It would seem that goods costing about 20*l.* were sent by the defendants' line of railway from Leeds to Neath, but that somehow or other they were lost on the way; and the question is, what damages is the plaintiff entitled to recover? It has been argued for the defendants that, according to the rule laid down in *Rice v. Baxendale*, the measure of damages would be the value of the goods at the place and time where and when they ought to have been delivered, which in this case would have been Neath on the 9th November. To this rule we agree; for where, at the

place to which goods are to be sent, there is a market, the measure of damages under the rule will be the price at which such goods can be bought in the market. Where there is no market, we have no such means of settling the market value, and it must be ascertained by taking into consideration various matters, including, in addition to cost-price and expenses of transit, reasonable importer's profits. As to what these are, it may be difficult to prove by evidence before a jury, but they should consider what are fair and reasonable profits, which persons in the ordinary course of business in such a case would be likely to make. The defendants have paid into court less than ten per cent. interest on the actual cost and expenses, and the question is, were the jury warranted in giving more? I think they were; and in this case they have done so; and although they have been liberal, I see no ground for disturbing their verdict.

MELLOR, J.—I agree with my brother BLACKBURN. It is impossible to lay down the rule that in a place where there is no market the market-price is to be limited to the cost-price and the expenses of carriage; another element must be added, namely, the importer's profits. No man brings goods to a place to dispose of without adding something to their price beyond what they cost him to bring them, and that addition is the importer's profit. I think the verdict ought to stand.

SHEE, J.—I am entirely of the same opinion. I take it that when a carrier fails to deliver goods with which he has been intrusted, at the right time, the person to whom the duty of carriage is owing is entitled within a reasonable time to go and purchase similar goods at the place where the carrier undertook to deliver them. If there is a market there he suffers no damage beyond the cost of supplying himself in the market, and the market-price will in such case afford a measure of damages. But if there is no market where such goods can be obtained, then according to the proper construction of *Hadley v. Bazendale*, the damages should be ascertained by arriving at the probable cost of such goods obtainable there, including the reasonable profit of importation; that is, such a sum as a dealer selling them would require as his fair profits on the transaction.

Rule discharged.